In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1381

JOSEPH N. TOONI AND DANIEL L. EDWARDS, JR.,
PETITIONERS

v.

ROBERT C. SEAMANS, JR.,
SECRETARY OF THE AIR FORCE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

We invite the attention of the Court to the following facts, which show that the petition for a writ of certiorari was filed out of time.

On October 16, 1968, the court of appeals entered its judgments—which upheld the action of the Secretary of the Air Force in dismissing the petitioners from civil service employment—and on December 10,

1968, it denied timely petitions for rehearing. On March 8, 1969, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari for 60 days to May 9, 1969 (Pet. 1-2). The petition was filed on May 10, 1969, 151 days after the denial of rehearing.

28 U.S.C. 2101(c) provides that

> any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Since these limits are jurisdictional, the petition should be denied as untimely.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1969.

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